HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL NO. 1299 OF 2006

Between:

The Vice Chairman & Managing Director,

A.P.State Civil Supplies Corporation Limited,

Hyderabad

..... Appellant

AND

R. Basava Raj

.....Respondent

:: J U D G M E N T ::

Counsel for the appellant : Shri N. Subba Reddy

Counsel for the respondent : Shri B. Nalin Kumar

Dated: 13.12.2006

Per G.S.SINGHVI, CJ

This appeal is directed against order dated 26.10.2006 passed by the learned Single Judge in Writ Petition Nos. 16278 and 20118 of 2005 whereby he declared that the writ petitioner (respondent herein) is entitled to refund of the Earnest Money Deposit amounting to Rs.2,50,000/- and that he shall not be blacklisted for future contracts.

It is borne out from the record that in response to tender notice dated 25.06.2005 issued by Andhra Pradesh State Civil Supplies Corporation Limited (for short 'the Corporation') for transportation of food grains, pulses and other commodities within and outside the District of Medak, the petitioner submitted tender and quoted the following rates under System I.

SYSTEM I

RATE QUOTED IN RUPEES PER MT PER KM, IRRESPECTIVE OF DISTANCE:

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Rate in figures Rate in words

Rs.Ps.

Rate per Metric tonne per KM 0.55 Paise Fifty Five only

irrespective of distance

SYSTEM II

RATE QUOTED IN RUPEES PER MT PER KM FOR SLABS AS MENTIONED BELOW:

Rate in figures Rate in words

Upto 16 KMs.

Per MT.

(Flat Rate) Rs.98.00 Rupees Ninety Eight only

Beyond 16 KMs.

Per MT. Per KM Rs.3.44 Rupees Three and Paise

Forty Four only

Fifteen other persons submitted tenders. The competent authority opened the tenders on 15.07.2005. On the next day i.e. 16.07.2005, the tenderers were called for negotiations. In the course of negotiations, the respondent reiterated the rates quoted in the tender document. Since the bid of the respondent was lowest, the same was accepted by the competent authority. This was conveyed to the respondent vide letter dated 20.07.2005. In the meanwhile, the respondent is said to have given letter dated 15.07.2005 (the same was received by the concerned authority on 19.07.2005) vide which he stated that he wanted to quote the rate per kilo meter as Rs.5.50 and by mistake the rate was quoted as Rs.0.55. On the next day, the respondent sent letter to the appellant to issue work order at the changed rates. This was not accepted by the competent authority.

In terms of the tender notice, the respondent was required to execute the agreement, which the latter failed to do within the specified time. Therefore, by an order dated 17.08.2005, the appellant forfeited the Earnest Money Deposit and also blacklisted the respondent.

The respondent questioned the aforementioned actions of the competent authority of the Corporation in two writ petitions to which reference has been made hereinabove.

The pleaded case of the respondent was that by mistake he had quoted Rs.0.55 as the rate for transportation of food grains etcetera and, as a matter of fact, he wanted to quote the rate of Rs.5.50 per metric tonne per kilo meter. It was further pleaded by the respondent that the mistake committed in the quoting of rates was corrected much before acceptance of his offer, but the appellant arbitrarily accepted the rates specified in the tender document. Another plea taken by the respondent was that the action taken by the appellant to blacklist him is vitiated due to violation of the rules of natural justice.

In the counter-affidavit filed on behalf of the non-petitioner (appellant herein) by Shri N. Ganapathi Rao, General Manager (PDS) of the Corporation, reliance was placed on the terms and conditions specified in tender notice, tender document submitted by the writ petitioner (respondent herein) and letter dated 15.07.2005 given by him at the time of negotiations and it was averred that after having unequivocally quoted Rs.0.55 per metric tonne per kilo meter as the rate for transportation of the goods, the writ petitioner was not entitled to resile from his offer and no illegality was committed by the competent authority by accepting the same ignoring the subsequent communication given for change of the rate.

The learned Single Judge allowed both the petitions albeit without adverting to the facts incorporated in the counter-affidavit filed on behalf of the appellant. This is evinced from the following observations contained in the order under challenge:

> " There is no necessity of going into all the details. It is unfortunate that the tender of the petitioner was accepted by order dated 20.7.2005. Normally speaking, no contractor of prudence could have quoted 0.55 ps. per metric tonne per kili metre and no officer of prudence could have accepted the same. Asking to perform such a contract, which is nothing but impossible. Instead of considering the letter of the petitioner dated 15.7.2005, the respondent has arbitrarily passed the impugned order dated 17.8.2005 forfeiting the EMD as well as blacklisting him for future contracts. I am of the opinion that the approach made by the respondent Corporation is pedantic, unreasonable, arbitrary and illegal."

We have heard learned counsel for the parties and carefully scanned the entire record. In our opinion, the order under challenge is liable to be set aside insofar as it relates to Writ Petition No.20118

of 2005 because the reasons assigned by the learned Single Judge for invalidating the action of the competent authority of the Corporation to forfeit the Earnest Money Deposit is based on pure conjectures. The respondent's plea that by mistake he had quoted very low rates in the tender document must be treated as an after thought because he had quoted the rates not only in figures but in words and this was reiterated in the communication given at the time of negotiations held on 16.07.2005. In that letter, the respondent had repeated the rates quoted in the original tender (again quoted in words and figures). Therefore, the theory of accidental mistake is totally unbelievable and the learned Single Judge gravely erred by ordering refund of the Earnest Money Deposit by erroneously presuming that the respondent had quoted rates under a mistaken impression.

We are further of the view that the learned Single Judge could not have entertained the respondent's challenge to the action taken by the competent authority of the Corporation without adverting to the terms and conditions of the tender notice and the detailed facts incorporated in the counter filed on behalf of the appellant which clearly shows that the forfeiture of Earnest Money Deposit was brought about strictly in accordance with the terms and conditions of the tender notice. The observations made by the learned Single Judge that no contractor of prudence could have quoted Rs.0.55 Ps. per metric tonne per kilo meter and no officer of prudence could have accepted the same are clearly based on conjectures. If the rates quoted by the respondent (in words and figures) are read as a whole, it is impossible to agree with the learned Single Judge that no person of reasonable prudence could have quoted those rates. The actual amount which could have been paid to the respondent was Rs.98.00 per kilo meter up to 16 kilo meters and Rs.3.44 beyond the distance of 16 kilo meters. Therefore, the learned Single Judge was not right in considering the issue in isolation with reference to only one component of the rate quoted by the respondent.

There is another reason for our inclination to upset the order under challenge. The learned Single Judge overlooked the fatal defect with which the writ petition filed by the respondent suffered namely non-impleadment of Andhra Pradesh State Civil Supplies Corporation Limited as party to the writ petition. In our opinion, even though the respondent had not raised the objection to the maintainability of the writ petition on the ground that the Corporation had not been impleaded as respondent, the learned Single Judge was duty-bound to direct his attention to this defect in the constitution of the writ petition because it is settled law that in fiscal matters no writ

can be issued by the Court against a State, registered society, company, corporation or any institution unless the said company, corporation, institution is impleaded as a party. The Vice-Chairman and Managing Director of the Corporation is only the functionary of the Corporation and not the Corporation which has an independent juridical personality and which can sue and be sued in its own name.

In the result, the appeal is allowed and the order of the learned Single Judge is set aside. As a consequence, Writ Petition No.20118 of 2005 filed by the respondent shall stand dismissed. However, it is made clear that this order shall not affect the adjudication made by the learned Single Judge on the legality of the action taken by the competent authority of the Corporation to blacklist the respondent.

As a sequel to disposal of the writ appeal, W.A.M.P.No.2754 of 2006 filed by the appellant for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

ksld

13.12.2006